

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF WEST VIRGINIA**

CHARLESTON DIVISION

UNITED STATES OF AMERICA

v.

Criminal No. 2:18-cr-00198

KEITH ALLEN SIZEMORE

**DEFENDANT'S MOTION FOR RECONSIDERATION
FOR RELEASE ON BOND**

Defendant, Keith Allen Sizemore, by his counsel, moves this Court pursuant to 18 U.S.C. § 3142(f) to schedule a hearing to determine whether the defendant should now be released on bond. In support of this Motion, the defendant states as follows:

- (1) The defendant has been charged in a single count Indictment with possession with intent to distribute a quantity of heroin in violation of 21 U.S.C. § 841(a)(1). Dkt. No. 1.
- (2) The Government previously filed a detention motion against the defendant. On October 23, 2018, a detention hearing was held for the defendant before United States Magistrate Judge Omar J. Aboulhosn. Dkt. No. 15. Judge Aboulhosn agreed to release the defendant to the third party custody of his father, Dexter Sizemore, with the special condition of home incarceration.
- (3) On December 4, 2018, the Probation Office filed a Petition alleging that the defendant's father was no longer willing to serve as third-party custodian and

that the defendant had violated the special condition of home incarceration. Dkt. No. 22. On December 13, 2018, the Probation Officer filed an Amended Petition alleging that the defendant had submitted a positive urine screen for controlled substances on December 6, 2018. The defendant did not contest the bond revocation proceedings and has remained in custody at Southern Regional Jail since December 6, 2018.

(4) On December 20, 2018, the defendant filed a Motion to Suppress all of the physical evidence seized from the defendant's residence and all incriminatory statements made by him in a post-arrest interview as a result of an illegal search conducted by the Fayette County Sheriff's Department. Dkt. No. 37. On January 8, 2019, the Court held an evidentiary hearing on the defendant's motion. On March 1, 2019, the Court entered a Memorandum Opinion and Order granting the defendant's motion to suppress. Dkt. No. 58.

(5) There has now been a change of circumstances concerning the nature and circumstances of the charged offense to the extent that this Court has ruled that the Government cannot introduce evidence seized as the result of an illegal search of the defendant's home as well as the defendant's incriminating post-arrest statements. This Court should find that the strength of the Government's case against this defendant has been substantially weakened. As a result, this defendant should be considered for release on bond pending the Government's decision as to how the Government intends to proceed with this matter.

(6) Counsel has contacted Wanda Sizemore, the defendant's mother, who has expressed a willingness to allow her son to stay with her and her husband, Dexter

Sizemore, at their home in Oak Hill, West Virginia. This address was previously approved as a bond location for the defendant.

Respectfully submitted this 4th day of March, 2019.

KEITH ALLEN SIZEMORE

By Counsel

**BRIAN J. KORNBRATH
ACTING FEDERAL PUBLIC DEFENDER**

s/David R. Bungard

David R. Bungard, Bar Number: 5739
Assistant Federal Public Defender
Office of the Federal Public Defender
300 Virginia Street, East, Room 3400
Charleston, WV 25301
Telephone: (304) 347-3350
Facsimile: (304) 347-3356
E-mail: david_bungard@fd.org